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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 229

IN THE MATTER OF ELIZABETH WRIGHT AND CHARLES C. WRIGHT, DEBTORS.

ELIZABETH WRIGHT AND CHARLES C. WRIGHT,
Petitioners,

vs.

GUSTA LOGAN, HARRIETT LOGAN SAWYER AND EXIA LOGAN REESE,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PAUL F. JONES,
HAROLD F. LINDLEY,
306 Adams Building,
Danville, Illinois,
JOHN A. ARNOLD,
Boatmen's Bank Building,
St. Louis, Missouri,
Attorneys for Respondents.

INDEX.

	PAGE
Statement of the Case	1
Summary of Argument	6
Argument	10
No Grounds Exist Which Would Justify the Exercise by This Court of Its Power to Grant a Writ of Certiorari	10
I. This case is not of sufficient general importance to justify this court granting a writ of certiorari	10
II. When the period of redemption in foreclosure proceeding has expired, the Bankruptcy Court has no jurisdiction to entertain debtors' petition under Section 75 of the Bankruptcy Act	11
III. Decree of trial court affirmed by Circuit Court of Appeals is not based solely upon the fact that debtors had enjoyed a moratorium of five years	17
IV. The petition presents no important jurisdictional question arising under the Federal Bankruptcy Act	18
V. The decision of the Circuit Court of Appeals is not in conflict with any decision of this Court or of a Circuit Court of Appeals	19
VI. Debtors must amend their petition asking to be adjudged a bankrupt within a reasonable time after failing to obtain acceptance of a majority of their creditors to a proposed rehabilitation plan	21
Conclusion	22

CASES CITED.

Bernards v. Johnson, 103 F. (2) 567, cert. denied 308 U. S. 595 ..... 7, 12
Borchard v. California Bank, 310 U. S. 311, 84 L. Ed. 1222 19
Bradley v. Lightcap, 195 U. S. 1 15
Bradley v. Lightcap, 195 U. S. 24 15
Buttars v. Utah Corp., 116 F. (2) 622 ..... 9, 11-12, 21
Cobb v. Feuerstein, 308 U. S. 433, 84 L. Ed. 370 19
Cohan v. Elder, 112 F. (2) 967 20
Cohan v. Elder, 118 F. (2) 850 20
In Re: Cresap, 99 F. (2) 722 ..... 7, 12
In Re: Davis, 22 Fed. Supp. (2) 2 13
Ellis v. Connecticut Mutual Life Ins. Co., 111 F. (2) 896 20
Fed. Land Bank v. Hanson, 109 F. (2) 139 19
John Hancock Life Ins. Co. v. Bartels, 308 U. S. 180, 84 L. Ed. 176 19
Lightcap v. Bradley, 186 Ill. 510 15
McCook v. Fed. Land Bank, 108 F. (2) 19
Paradise Land & Livestock v. Fed. Land Bank, 108 F. (2) 832 20
In Re: Pate, 99 F. (2) 694 ..... 9, 21
Peterson v. John Hancock, 116 F. (2) 148 20
In Re: Price, 99 F. (2) 691 ..... 9, 21
Rhorer v. Deatherage, 336 Ill. 450, 454 15
Schreiner v. Farmers Trust Co., 91 F. (2) 606, cert. denied 302 U. S. 686 ..... 7, 13
Schreiner v. Oxford, 116 F. (2) 683 20
In Re: Tracy, 80 F. (2) 9 ..... 7, 12
Trego v. Wright, 111 F. (2) 990 20

Westside Trust & Savings v. Lopoten, 358 Ill. 631, 639. 15
Wolkenstein v. Slonim, 355 Ill. 306, 309..... 15
Wright v. Logan, 75 F. (2) 687.....3, 14
Wright v. Logan, 288 Ill. App. 481..... 3
Zumkehr v. Steinman, 108 F. (2) 448..... 20

STATUTES CITED.

Sec. 75 Bankruptcy Act (11 U. S. C. A. 203)..... 1
Ill. Rev. Statutes, Ch. 77, Par. 18.....2, 6, 14
Ill. Rev. Statutes, Ch. 110, Par. 212.....3, 8, 15
Sec. 240 (a) Judicial Code (28 U. S. C. A. 347 a).....6, 10
Sec. 75 (n) Bankruptcy Act (11 U. S. C. A. 203 n)....7, 11

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STATEMENT OF THE CASE.

Respondents deem it advisable to make a brief additional statement in order to bring before this Court the facts involved and the issues presented by the petition.

This controversy arises under Section 75 of Bankruptcy Act (11 U. S. C. A. 203).

The Circuit Court held that a farmer debtor may not

complain where he is denied adjudication under Sub-Section S where he permitted his period of redemption under the State law to expire before filing his original petition; where he disregarded the order of the Court to file his petition under Sub-Section S and let five years pass before so doing; where he had allowed his proceeding to lie dormant for years and then, after expressly promising in open court to surrender possession of the premises involved if he did not pay up within a specified time, disregarded his promise and after expiration of the time filed a petition for extension; and where he had received all the benefits to which he could possibly have been entitled under the provisions of Section 75-S.

The debtors had a decree of foreclosure entered against them in the Circuit Court of Edgar County, Illinois, December 17, 1932 (Tr. 26; 36). The premises involved were sold under this decree on February 3, 1933, and purchased by W. S. Logan, the mortgagee for $3,801.52, leaving a deficiency of $300. A certificate of purchase was issued and delivered to the purchaser by the Master in Chancery on the day of sale (Tr. 27; 36). Under the Illinois Statute, (Illinois Revised Statutes of 1939, Chapter 77, Paragraph 18), the debtors, defendants in that foreclosure suit, were given twelve months from the date of the sale in which to redeem the real estate so sold. Debtors made no redemption.

Three months after the expiration of their period of redemption, namely, on May 3, 1934, debtors filed their petition under Section 74 of the Bankruptcy Act (Tr. 7). The cause was referred to the Referee in Bankruptcy who after a hearing entered an order denying the petition for the reason that the debtors, having permitted the redemption period to expire, there was no contractual relation of debtor and creditor between them and the former mortgagee, and because the petition was not filed within the time contemplated by the Statute (Tr. 27).

On August 30, 1934 the District Court entered an order approving and confirming the order of the Referee (Tr. 2; 28). Debtors appealed to the Circuit Court of Appeals for the Seventh Circuit and the judgment of the District Court was affirmed and rehearing denied (*Wright* v. *Logan*), 75 F. (2d) 687.

A week subsequent to the filing of the mandate, debtors filed an amended petition under Section 75 of the Bankruptcy Act asking for an extension of time and alleging that they desired to file a suit in the Circuit Court of Edgar County, Illinois for a decree allowing them to redeem from the foreclosure sale after the period of redemption (Tr. 20). Such suit was filed, dismissed for want of equity and appealed to the Appellate Court. (*Wright* v. *Logan*, 288 Ill. App. 481.) That Court held a reasonable time should be given debtors to redeem on the theory that mortgagee had made a verbal agreement to this effect. Under the Illinois Statute, Chapter 110, Paragraph 212 it is provided no new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate is filed in the trial court within one year after final determination by the reviewing Court. Debtors did not comply with this statutory provision and have never filed the mandate of the Illinois Appellate Court. The right to obtain the extension to the period of redemption to be fixed by the trial court lapsed upon debtors' failure to file such mandate (Tr. 29).

On May 16, 1935 the Conciliation Commissioner referred to the Court a motion filed by the mortgagee asking that the proceeding in bankruptcy be dismissed (Tr. 18). On hearing, the Court entered an order dissolving the injunction entered in said cause. Debtors prayed an appeal and the Court fixed the amount of appeal bond at $200. This appeal was never prosecuted (Tr. 17; 3).

Subsequent to the dissolution of the injunction, mortgagee secured Master's Deed which was filed for record.

The debtors informed the Conciliation Commissioner before whom the case was pending that they were not proceeding under the Frazier-Lemke Act, and therefore were not affected by its defeat as unconstitutional, whereupon, the Conciliation Commissioner filed his final report and returned to the Court all schedules and claims (Tr. 18).

On September 30, 1935 the District Judge entered an order upon the debtors giving them leave to amend their petition to include a prayer for adjudication under new Sub-Section S of 75 of the Bankruptcy Act as amended within ten days and that in the absence of such amendment said debtors show cause why the original petition should not be dismissed (Tr. 19). Debtors did not file a petition to be adjudicated under Sub-Section S, but did on October 9, 1935 file a petition asking that they be given the right to avail themselves of a composition with their creditors for an extension of time (Tr. 19). The case was reinstated under Section 75 and referred to the Conciliation Commissioner of Edgar County (Tr. 22). On petition of debtors the matter was referred to the Conciliation Commissioner of Champaign County, Illinois (Tr. 24; 25; 3). On February 29, 1936 debtors filed a petition for an order restraining any person from obtaining a writ of restitution. Hearing on this petition was set for March 7, 1936, but debtors did not appear and no hearing had ever been had on that petition (Tr. 3; 29).

Nothing was done in the bankruptcy case for a period of three years from February 29, 1936 until January 4, 1939. During that period the mortgagee died leaving as his heirs the respondents.

On January 4, 1939 respondents filed a petition asking for a report of the Conciliation Commissioner on the proceeding and that thereafter they be allowed to obtain possession of the real estate or in the alternative, that the Court determine the amount due under the foreclosure decree

and fix a reasonable time for appellant to pay that amount (Tr. 26). Upon hearing March 11, 1939 the Court continued the petition for 120 days directing the debtors to redeem the property within that time for the amount agreed upon by the parties or complete rehabilitation within the terms of the act. The Court fixed the time of 120 days because that corresponded to the time it would take to effect a sale if one were necessary plus the 90 days permitted the debtors for redemption and directing if rehabilitation was not completed within the time given that full effect be given to the deed held by respondents (Tr. 236; 240).

On January 12, 1940 upon a showing that debtors had neither redeemed nor rehabilitated, the Court ordered them to surrender possession of the premises on or before March 2nd or pay into the Court $5,560 for respondents. This extended time was given on the promise of debtors made in open Court that they would voluntarily surrender possession if they were permitted to remain on the premises until March 1st (Tr. 44). Debtor did not comply with that order and promise to the Court and neither paid nor surrendered possession. However, subsequent to the expiration of the time fixed by the Court and on March 2, 1940 debtors filed with the Conciliation Commissioner a rehabilitation scheme offering to pay to respondents the sum of $1,000 but making no offer or provision for paying any more than that sum (Tr. 45; 46). On the same date, March 2, 1940 (almost five years after the Court ordered them to do so) debtors filed their petition to amend the petition pursuant to the provisions of Section 75-S (Tr. 47). Three days later the District Court entered an order dismissing this petition (Tr. 48) which order was affirmed by the Circuit Court of Appeals.

SUMMARY OF ARGUMENT.

No Grounds Exist Which Would Justify the Exercise by This Court of Its Power to Grant a Writ of Certiorari.

I.

This Case Is Not of Sufficient Gravity or General Importance to Justify This Court in Granting a Writ of Certiorari.

Under well established principles the power of this Court in granting writs of certiorari under Section 240 (a) of the Judicial Code (28 U. S. C. A. 347-A) is to be exercised only when there are special and important reasons therefor.

The petition presents no questions of gravity or importance because of the legal, economic or social problems involved.

II.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtors' Petition Under Section 75 of the Bankruptcy Act.

Foreclosure sale was held on February 3, 1933. Petitioners' right of redemption expired February 3, 1934. (Ill. Rev. Statutes, Ch. 77, Paragraph 18). Petitioners filed their first petition under Section 74 of the Bankruptcy Act on May 3, 1934 three months after the expiration of their period of redemption. Under statute and decisions the rule uniformly established is that where a mortgagor has a foreclosure proceeding brought against him and

allows his period of redemption to expire before filing his petition under Section 75 of the Bankruptcy Act, the Court has no jurisdiction. (Sec. 75 N, 11 U. S. C. A. 203); *In Re Cresap*, 99 F. (2) 722, C. C. A. 7; *In Re Tracy*, 80 F. (2) 9 (C. C. A. 7); *Bernards* v. *Johnson*, 103 F. (2) 567 (C. C. A. 9), certiorari denied, 308 U. S. 595; *Schreiner* v. *Farmers Trust Company*, 91 F. (2) 606 (C. C. A. 3) certiorari denied 302 U. S. 686.)

III.

Decree of Trial Court Affirmed by Circuit Court of Appeals Is Not Based Solely Upon the Fact That Debtors Had Enjoyed a Moratorium of Five Years.

Petitioners' brief emphasizes that the only question presented is whether a petition may be dismissed upon the theory that the administration of the proceedings has already given the farmer debtors the equivalent of the three year moratorium. This is only one of the questions involved. It will be noted that petitioners ignore the other questions. The fact that petitioners permitted the period of redemption to expire before filing their petition in bankruptcy is conclusive.

Petitioners allowed more than five years to expire before filing their petition under Sub-Section S of Section 75 of the Bankruptcy Act.

The time consumed in the administration of this case was not due to the acts of the Court as charged by petitioners but was due to acts and unjustified delays on the part of the petitioners.

Petition under Sub-Section S of Section 75 of the Bankruptcy Act was never filed; it was merely tendered. (Tr. of R. 47.)

To determine the reason motivating the trial Court, resort must be had to all three orders mentioned in the final order of that Court, namely, the order of March 11, 1939

(Tr. of R. 36), the order of January 12, 1940 (Tr. of R. 44) and the order of March 5, 1940 (Tr. of R. 48).

IV.

The Petition Presents No Important Jurisdictional Question Arising Under the Federal Bankruptcy Act.

This is not the usual case before this Court involving some important jurisdictional questions.

(1) After sale under decree of foreclosure in the State Court petitioners permitted their period of redemption to expire before filing their original petition. (Tr. of R. 7.)

(2) After an adverse decision by the Circuit Court of Appeals for the Seventh Circuit, petitioners resorted to the State Courts of Illinois. (Tr. 20.)

(3) Having secured a decision in the Appellate Court of Illinois that a reasonable time should be given them in which to redeem, petitioners abandoned that advantage by failing to file the mandate of the Appellate Court as required by Illinois law (Ill. Rev. Statutes, Ch. 110, Paragraph 212). (Tr. 29.)

(4) Petitioners had possession of the premises for almost eight years and failed to pay the usual and customary rental. (Tr. 38.)

(5) In 1935 the District Court entered an order that petitioner amend the petition to include a prayer for adjudication under the new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days (Tr. 19) and petitioners did not tender such amendment until 1940—a delay of five years. (Tr. of R. 47.)

(6) Petitioners at a hearing in open court voluntarily offered to surrender title to and possession of the premises if they were allowed to remain in possession until March 1, 1940. (Tr. of R. 48.) This promise was ignored and disregarded by petitioners.

There is no reason why the decision of the Circuit Court of Appeals should be reviewed.

V.

The Decision of the Circuit Court of Appeals Is Not in Conflict With Any Decision of This Court or Any Decision of a Circuit Court of Appeals.

The facts involved in this proceeding are so different from the facts in the other cases decided by this Court and the Circuit Courts of Appeal that there can be found no conflict. Under Paragraph IV of this Summary we have set out those differences.

VI.

Debtors Must Amend Their Petition Asking to Be Adjudged a Bankrupt Within a Reasonable Time After Failing to Obtain Acceptance of a Majority of Their Creditors to a Proposed Rehabilitation Plan.

The Commissioner reported on September 28, 1935 that the creditors of the petitioners and the petitioners were unable to agree. (Tr. 18.) Two days later, that is, on September 30, 1935, the Court entered an order directing the petitioners to amend their petition to include a prayer for adjudication under the new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days, and that in the absence of such amendment show cause on or before said date why the original petition should not be dismissed. (Tr. 19.) The debtors did not tender such amended petition until March 2, 1940. (Tr. 47.)

Not having acted within a reasonable time, petitioners lost their right to proceed under Sub-Section S. *In Re Price*, 99 F. (2) 691 (C. C. A. 7); *In Re Pate*, 99 F. (2) 694 (C. C. A. 7th); *Buttars* v. *Utah Corporation*, 116 F. (2d) 622 (C. C. A. 10th).

ARGUMENT.

No Grounds Exist Which Would Justify the Exercise by This Court of Its Power to Grant a Writ of Certiorari.

I.

This Case Is Not of Sufficient Gravity or General Importance to Justify This Court in Granting a Writ of Certiorari.

It is well established that the power of this Court to grant writs of certiorari under Section 240-A of the Judicial Code (28 U. S. C. A. 347-A) rests in the discretion of the Court. This Court has many times declared that this is a power to be exercised sparingly and only in cases where there are special and important reasons therefor or in order to secure uniformity of decisions.

That this case is not of sufficient gravity or general importance to justify the exercise of power to grant a writ of certiorari is apparent from a reading of the statement of the case preceding this argument.

This case does not solely involve and was not decided only upon the principle stated in petitioners' brief. Petitioners disregard the important fact that they permitted their period of redemption to expire before filing their petition in bankruptcy and also disregarded the fact that after the Court ordered them to amend their petition to come under Sub-Section S they waited five years before so doing.

No important, legal, economic or social problem is involved. The controversy is simply one between private litigants decided upon the Statute and ordinary principles of law and the fact that petitioners were negligent and flouted the orders of the Court does not transform the

cause into one of special importance or gravity beyond the importance to the litigants themselves.

II.

When Period of Redemption in Foreclosure Proceeding Has Expired, the Bankruptcy Court Has No Jurisdiction to Entertain Debtors' Petition Under Section 75 of the Bankruptcy Act.

A reading of the Statute demonstrates that Congress did not intend to confer jurisdiction upon the Bankruptcy Court where debtors had permitted the right of redemption to expire. (11 U. S. C. A. 203-N.)* It will be noted that the Congress did not subject to the jurisdiction of the Court property upon which the right of redemption had expired.

The decisions under this Statute are uniform in holding the Court had no jurisdiction under such facts. *Buttars* v.

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* "The filing of a petition or answer with the clerk of the court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, *the right or the equity of redemption where the period of redemption has not or had not expired*, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"*In all cases where, at the time of filing the petition, the period of redemption has not or had not expired*, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

Utah Mortgage Loan Corporation, 116 F. (2) 622 (C. C. A. 10) is a case in point. All except sixteen days of the period of redemption had expired when on July 13, 1939 debtor filed his petition in the Federal Court. Debtor failed to work out a composition with his creditors within a reasonable time and the Court held that the automatic stay terminated on October 13, 1939 and the period of redemption of the remaining sixteen days again began to run and the period of redemption therefore expired on October 29th. The amended petition to come under Sub-Section S was filed November 27, 1939. The Court said:

> "In the interval, the remaining period of redemption had expired and he had no remaining interest in this property when he filed his amended petition. The property was properly stricken from the bankruptcy proceedings."

Another case in point is *In re Cresap*, 99 F. (2) 722 (C. C. A. 7th). The debtor in this case waited three months after his period of redemption had expired before filing his petition to be adjudicated under Sub-Section S of Paragraph 75. The Court held that the debtor had nothing more than a bare legal title which was valueless so far as rehabilitation was concerned and the order striking the real estate from the debtor's schedule was affirmed.

An analogous case is *In re Tracy*, 80 F. (2) 9 (C. C. A. 7th).

A case from another jurisdiction is *Bernards* v. *Johnson*, 103 Fed. (2d) 567 (C. C. A. 9th, certiorari denied, 308 U. S. 595). In that case there was a foreclosure suit and the time within which debtor might have redeemed expired on June 29, 1936. Subsequent thereto, on July 15, 1936, debtors petitioned for an order granting them possession of the property and the trial Court dismissed this petition and an appeal was taken. The Circuit Court of Appeals held that no redemption having been made the debtors had no interest in the land after the expiration of their period of redemption and that the Bankruptcy Court had no jurisdiction for that reason.

Still another jurisdiction is in accord with this rule. *Schreiner* v. *Farmers Trust Company*, 91 F. (2) 606 (C. C. A. 3, certiorari denied, 302 U. S. 686). In that case foreclosure was instituted and before the sale debtor filed a petition under Section 75 of the Bankrupcy Act.. Subsequent to the time when that act was held unconstitutional the Sheriff proceeded to sell the land under the foreclosure decree. When the act was amended the debtor had his proceeding reinstated but did not file a petition at that time to be adjudicated under Sub-Section S. The Court held that under the law of Pennsylvania the debtors had no title to the property after the Sheriff's sale and had no equity of redemption and consequently, the Bankruptcy Court had no jurisdiction over the mortgaged premises.

An Illinois case passes directly upon this question. *In Re Davis*, 22 F. (2) Supp. 2, 3 (East. Dist. Ill.). The decree of foreclosure and sale were had in the State Court. The land was sold to the mortgagee on July 25, 1936. Under Illinois law mortgagee's period of redemption expired July 25, 1937. One month thereafter on August 25, 1937, mortgagee filed his petition for relief under Section 75 of the Bankruptcy Act.. Upon this state of facts the Court said:

> "Under the Statutes of Illinois, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 18, the debtor's equity of redemption expires after the end of twelve months from the time of sale. Consequently at the time the debtor's petition was filed, his right to redeem had expired. Thereafter, creditors might have redeemed within three months. Smith-Hurd Statutes, Chapter 77, Paragraph 20, but at the time of the hearing before the Commissoner, that period had likewise expired so that under the Illinois Statutes in the normal course of procedure, the mortgagee was entitled to receive its Master's Deed, there having been no redemption, Smith-Hurd Illinois Statutes, Chapter 77, Paragraph 31. These facts bring the case clearly within *In Re Lowman*, 7 Cir. 79 F. (2) 887, and *Wright* v. *Union Central Life Insurance Co.*, 7 Cir. 9 F. (2) 894. By those

decisions the law of the Circuit and the parties to the litigation, as well as the Court are bound thereby. Those decisions hold substantially that the laws governed mortgages or rules of property under the State Statutes, that where a sale has been made by a State Court in satisfaction of the mortgage, and the debtor's period of redemption has expired, the Court is without power to grant relief to the debtor."

The Circuit Court of Appeals recognizes the principle in its opinion (Tr. 68, 69).

The Illinois Statute as to redemption by the mortgagee provides for redemption within twelve months from the date of the sale (Ill. Rev. Statutes, Chapter 77, Paragraph 18).*

Petitioners seek to avoid the force of the foregoing Statute and decisions by the assertion that their period of redemption had been extended by the decision of the Appellate Court of Illinois. This assertion brings forth a revealing set of incidents. This contention was presented in the District Court and from an adverse ruling an appeal taken to the Circuit Court of Appeals. That Court in *Wright* v. *Logan*, 75 F. (2) 687 held that it did not appear from the evidence that such an oral agreement was in fact made. Not being satisfied with the decision of the Federal Courts appellants then adverted to the Illinois Courts. They filed a suit in the Circuit Court of Edgar County, Illinois, seeking to redeem the real estate from the mortgage foreclosure sale on the theory that the mortgagee had orally agreed to permit redemption at any time. A decree against them in the trial Court was reversed by the Appellate Court of Illinois which ruled that there was such

* "Any defendant, his heirs, executors, administrators, assigns or any persons interested in the premises, through or under the defendant, may, * * * within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the Sheriff or Master in Chancery who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators or assigns, the sum of money for which the premises were sold or bid off with interest thereon at the rate of 6% per annum from the time of such sale, whereupon such sale and certificate shall be null and void."

an oral agreement and remanded the cause with directions to the trial Court to ascertain the amount due and fix a reasonable time during which mortgagee might redeem. The Illinois Statute, Chapter 110, Paragraph 212 provides:

> "No new trial shall be had by reason of the reversal of any judgment, order or decree unless the mandate shall be filed in the trial Court within one year after final determination by the reviewing Court."

Petitioners have never filed the mandate of the Appellate Court. They have by such failure lost the benefit of that decision which was handed down on January 15, 1937. Not having complied with the Statute, the decree of the Circuit Court of Edgar County is still in effect that there was no extension of the period of redemption beyond the twelve months statutory time.

Petitioners endeavor to avoid the inevitable conclusion by the assertion that under a foreclosure sale title remains in the mortgagor until the delivery of a deed. In support of that assertion they cite *Lightcap* v. *Bradley*, 186 Ill. 510 (Petitioners' Brief, page 24). They are evidently not aware of the fact that that case was reversed by this Court in *Bradley* v. *Lightcap*, 195 U. S. 1, 49 L. Ed. 65 and in *Bradley* v. *Lightcap*, 195 U. S. 24, 49 L. Ed. 75.

The law of Illinois is well established that after condition broken the mortgagee is, as between himself and the mortgagor, the owner of the fee and he has a right to possession against the mortgagor, his grantee, lessee or anyone claiming under him by any right. (*Westside Trust and Savings Bank* v. *Lopoten*, 358 Ill. 631, 639; *Wolkenstein* v. *Slonim*, 355 Ill. 306, 309; *Rhorer* v. *Deatherage*, 336 Ill. 450, 454.) Not only is the mortgagee the owner of the fee after condition broken, but he may maintain ejectment against the mortgagor or the owner of the equity of redemption, with the right to possession against the mortgagor or anyone claiming under him by any right.

In the case under consideration there was a condition

of the mortgage broken. A decree of foreclosure was entered which could not have been except for condition broken. Therefore, the original mortgagee upon such condition broken was the owner of the fee with the right to possession. When the petitioners permitted the right of redemption to expire they had lost all interest in the premises, and had neither title nor right to possession. It follows that the Bankruptcy Court was without jurisdiction as to the premises involved.

Petitioners also assert that the Master's deed is void. This Master's deed was executed and delivered July 27, 1935. Petitioners' period of redemption expired May 3, 1933. This period of redemption was not continued by operation of the Statute for the reason that the Statute itself provides it does not apply where, at the time of filing the petition, the period of redemption has expired. There is in full force and effect a decision of the Circuit Court of Appeals of the 7th Circuit and a decision of the Circuit Court of Edgar County, Illinois that there was no verbal extension of the right of redemption. The injunction restraining the Master from issuing a deed was dissolved on June 11, 1935 (Tr. 17; 3).

Under the law the Master's deed is entirely valid and effective. We submit that the Bankruptcy Court had no jurisdiction of the premises involved because petitioners had permitted their period of redemption to expire before filing their petition in bankruptcy. There is no conflict in the decisions. There is no question of public policy involved.

III.

Decree of Trial Court Affirmed by Circuit Court of Appeals Is Not Based Solely Upon the Fact That Debtors Had Enjoyed a Moratorium of Five Years.

Petitioners state that the narrow question involved is whether a Bankruptcy Court may deny to a farmer debtor the right to proceed under Sub-Section S on the ground that the debtor has already had the equivalent of the moratorium provided by that section (Petitioner's Brief, page 21). We cannot concede this position. It is true this question is involved but there are other distinct questions of law which conclusively show the decision of the Court to be correct and not subject to review. The fact that petitioners permitted their period of redemption to expire before filing their petition in bankruptcy is conclusive. The fact that petitioners delayed five years after being ordered to file under Sub-Section S before doing so is another conclusive ground upon which the decision of the Circuit Court of Appeals may be rested. The time consumed in this proceeding was not due to the act of the Court as charged by petitioners but was due to the acts and unjustified delays on the part of petitioners, for example, petitioners took out time to go to the Circuit Court of Edgar County, Illinois and the Appellate Court of Illinois. Petitioners were ordered in 1935 to file their petition under Sub-Section S or show cause why their petition should not be dismissed within ten days. They did not file under Sub-Section S until 1940. Petitioners asked for and were given an extension from time to time. Any delays were due to the acts of petitioners and the only thing the Court did was to give them every benefit of the law including a moratorium of almost eight years. In determining the reasons upon which the trial Court acted we must look to his three orders, namely, the order of March 11, 1939

(Tr. 36); order of January 12, 1940 (Tr. 24); and the order of March 5, 1940 (Tr. 48). The Court set out substantial and valid reasons for the decison in addition to the reason petitioners would like to think was solely considered.

IV.

The Petition Presents No Important Jurisdictional Question Arising Under the Federal Bankruptcy Act.

This is not the usual case before this Court involving some important jurisdictional questions.

(1) After sale under decree of foreclosure in the State Court petitioners permitted their period of redemption to expire before filing their original petition (Tr. of R. 7).

(2) After an adverse decision by the Circuit Court of Appeals for the Seventh Circuit, petitioners resorted to the State Courts of Illinois (Tr. 20).

(3) Having secured a decision in the Appellate Court of Illinois that a reasonable time should be given them in which to redeem, petitioners abandoned that advantage by failing to file the mandate of the Appellate Court as required by Illinois law (Ill. Rev. Statutes, Chapter 110, paragraph 212) (Tr. 29).

(4) Petitioners had possession of the premises for almost eight years and failed to pay the usual and customary rental (Tr. 38).

(5) In 1935 the District Court entered an order that petitioners amend the petition to include a prayer for adjudication under the new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days (Tr. 19) and petitioners did not tender such amendment until 1940—a delay of five years (Tr. 47).

(6) Petitioners at a hearing in open court voluntarily offered to surrender title to and possession of the premises if they were allowed to remain in possession until March 1,

1940 (Tr. of R. 48). This promise was ignored and disregarded by petitioners.

There is no reason why the decision of the Circuit Court of Appeals should be reviewed.

V.

The Decision of the Circuit Court of Appeals Is Not in Conflict With Any Decision of This Court or Any Decision of a Circuit Court of Appeals.

Petitioners urge on page 5 of their brief that the decision of the Circuit Court of Appeals is in conflict with various decisions of this Court and other Circuit Courts of Appeals.

There is one outstanding difference in this case from any other case relied upon by petitioners, namely, that here petitioners permitted their equity of redemption to expire and three months later filed their original petition in bankruptcy.

In *John Hancock Mutual Life Insurance Co.* v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176, the facts are that there had been no foreclosure proceeding instituted at the time that the debtor filed his petition in bankruptcy. It follows that the redemption period had not begun to run.

In *Borchard* v. *California Bank*, 310 U. S. 311, 84 L. Ed. 1222, no foreclosure proceedings were ever instituted.

In *Cobb* v. *Feuerstein*, 308 U. S. 433, 84 L. Ed. 370, the petition for bankruptcy was filed before the foreclosure sale and before the period of redemption could possibly have started to run.

In *Federal Land Bank* v. *Hanson*, 109 F. (2) 139 (C. C. A. 2), no foreclosure suit had been instituted and a period of redemption had not begun to run.

In *McCook* v. *Federal Land Bank*, 108 F. (2) (C. C. A. 5) no foreclosure had been instituted.

In *Ellis* v. *Connecticut Mutual Life Insurance Company*, 111 F. (2) 896 (C. C. A. 6), the sale in foreclosure had not been had when the bankruptcy proceeding was filed.

In *Trego* v. *Wright*, 111 F. (2) 990 (C. C. A. 6), the petition in bankruptcy was filed prior to the expiration of the period of redemption.

In *Schreiver* v. *Oxford*, 116 F. (2) 683 (C. C. A. 6), foreclosure proceedings were pending and before decree, debtor filed petition under Section 75.

In *Zumkehr* v. *Steinman*, 108 F. (2) 448 (C. C. A. 7), petition in bankruptcy was filed while foreclosure suit was pending and before decree was entered.

In *Peterson* v. *John Hancock*, 116 F. (2) 148 (C. C. A. 8), petition under Section 75 was filed pending foreclosure proceeding and prior to decree.

In *Cohan* v. *Elder*, 112 F. (2) 967 (C. C. A. 9), petition was filed under Section 75 prior to sale under a trust deed. The same facts are involved in *Cohan* v. *Elder*, 118 F. (2) 850 (C. C. A. 9).

In *Paradise Land & Livestock Company* v. *Federal Land Bank*, 108 F. (2) 832 (C. C. A. 10), petition was filed before any foreclosure suit was instituted.

All the other cases cited by petitioners on pages 6 and 7 of their brief are in various District Courts. In each of them the petition under Section 75 was filed prior to the time when the period of redemption began to run.

From these brief statements it will be noted that there is not a single case in which the farmer debtor permitted his period of redemption to expire before filing his petition in bankruptcy. Under paragraph II of our summary and this argument, we have presented cases which uniformly hold that when the period of redemption has expired, the Bankruptcy Court has no jurisdiction to entertain debtor's petition under Section 75 of the Bankruptcy Act.

VI.

Debtors Must Amend Their Petition Asking to Be Adjudged a Bankrupt Within a Reasonable Time After Failing to Obtain Acceptance of a Majority of Their Creditors to a Proposed Rehabilitation Plan.

On September 28, 1935 the Conciliation Commissioner reported that the petitioners and their creditors were unable to agree. (Tr. 18.) Two days later on September 30, 1935 the Court entered its order directing petitioners to amend their petition to include a prayer for adjudication under new Sub-Section S of Section 75 of the Bankruptcy Act as amended within ten days and that in the absence of such amendment they should show cause on or before said date why their original petition should not be dismissed. (Tr. 19.) Petition under Sub-Section S was never tendered by petitioners until March 2, 1940, five years after the entry of the above mentioned order. (Tr. 47.) It is held in *In Re Price*, 99 F. (2) 691 (C. C. A. 7) and in *In Re Pate*, 99 F. (2) 694 (C. C. A. 4) that debtors' petition under Sub-Section S must be filed within a reasonable period of time. To the same effect is *Buttars* v. *Utah Corp.*, 116 F. (2) 622. As the Circuit Court of Appeals said:

> "the privileges conferred upon the debtors by this remedial statute impose upon him a corresponding duty to move expeditiously in order to avail himself of its benefits. Certainly it cannot be construed to permit him to allow his proceeding to lie dormant for years and then after expressly promising to surrender possession of the premises involved if he does not pay up within a specified, invoke its benefits."

Conclusion.

The Circuit Court of Appeals properly affirmed the orders of the District Court and in so doing followed established judicial precedent.

It is respectfully submitted that the petition presents no grounds which would justify the exercise by this Court of its power to grant a writ of certiorari.

Respectfully submitted,

PAUL F. JONES,
HAROLD F. LINDLEY,
306 Adams Building
Danville, Illinois

JOHN ARNOLD,
Boatmen's Bank Building
St. Louis, Missouri
Attorneys for Respondents.